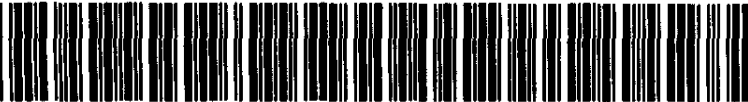
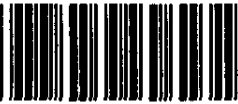
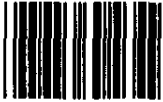
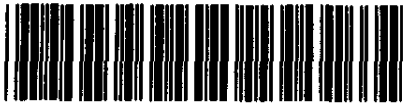


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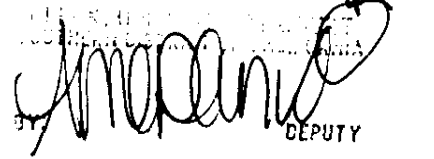
\*M.\*

1 JOHN S. BATTENFELD (SBN 119513)  
2 MELISSA M. MULKEY (SBN 186775)  
3 MORGAN, LEWIS & BOCKIUS LLP  
Twenty-Second Floor  
300 South Grand Avenue  
Los Angeles, California 90071-3132  
4 Telephone: (213) 612-2500  
5 Facsimile: (213) 612-2554

6 Attorneys for Defendants  
7 U. LIM AMERICA INC. and  
TAE JIN YOON

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DEPUTY

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 SOO CHEOL KANG,

12 Plaintiff,

13 v.

14 U. LIM AMERICA, INC. TAE JIN YOON,  
an individual and DOES 1 through 100

15 Defendants.  
16  
17  
18  
19

Case No. 99cv659JM (RBB)

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGMENT, AND, IN THE  
ALTERNATIVE, FOR SUMMARY  
ADJUDICATION OF CLAIMS**

DATE: Tuesday, February 22, 2000

TIME: 10:30 a.m.

COURTROOM: 6

DISCOVERY CUT-OFF: January 17, 2000

MOTION HEARING CUT-OFF: February 21, 2000\*

PRE-TRIAL CONFERENCE: March 17, 2000

TRIAL: April 11, 2000

Before the Honorable: Jeffery T. Miller

20  
21 ////

22 ////

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27 \* Due to the court holiday on Monday, February 21, 2000, the Court has confirmed that the  
28 February 22, 2000 hearing date is timely.

1 TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE that on February 22, 2000 at 10:30 a.m. in Courtroom 6 of  
3 the above-entitled Court, located at 880 Front Street, San Diego, California, Defendants U. Lim  
4 America Inc. ("U. Lim") and Tae Jin Yoon (collectively "Defendants") will and hereby do move the  
5 Court for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary  
6 judgment in its favor.

7 This Motion is made on the following grounds:

8 1. The undisputed facts demonstrate that Plaintiff Soo Cheol Kang ("Kang")  
9 was an employee at-will. Thus, Kang cannot maintain an action for breach of an alleged  
10 employment contract.

11 2. Even if Kang could overcome the at-will presumption, the undisputed facts  
12 demonstrate that U. Lim terminated his employment for cause, and thus did not breach the implied  
13 contract.

14 3. Because Kang was an at-will employee and U. Lim terminated his  
15 employment for cause, Kang cannot maintain a cause of action for breach of the covenant of good  
16 faith and fair dealing.

17 4. It is undisputed that Kang filed this action one year and two weeks after the  
18 termination of his employment with U. Lim. Thus, Kang's claim for wrongful termination in  
19 violation of public policy is barred by the one-year statute of limitations.

20 5. Kang cannot maintain an action under Title VII of the Civil Rights Act of  
21 1964 ("Title VII") against U. Lim because U. Lim did not employ fifteen or more employees during  
22 the relevant time frame.

23 6. Kang cannot maintain a Title VII or FEHA action against Defendant Tae Jin  
24 Yoon because he was not Kang's employer, and there is no individual liability under Title VII or the  
25 FEHA as a matter of law.

26 7. Kang cannot maintain a claim under the California Fair Employment and  
27 Housing Act ("FEHA") against Defendants because it is undisputed that he worked in Tijuana,  
28

1 Mexico, the alleged discrimination occurred in Tijuana, Mexico, and the FEHA does not provide  
2 relief for acts of discrimination occurring outside the United States.

3 8. Given the undisputed facts, even if Title VII or the FEHA apply, Kang's  
4 claim that he was terminated and/or harassed due to his national origin fail as a matter of law.  
5 Further, Kang's harassment claims are barred by the limitations period under both Title VII and the  
6 FEHA.


7 9. For the same reasons that Defendants are entitled to summary judgment on  
8 Kang's Title VII and FEHA claims, they are entitled to summary judgment on his claim for  
9 wrongful termination in violation of public policy.

10 This Notice will be based upon this Notice, the accompanying Memorandum of  
11 Points and Authorities, Proposed Statement of Uncontroverted Facts, Declaration of John S.  
12 Battenfeld and the exhibits attached thereto, the Declaration of Jae Ho Cho, and upon any further  
13 oral and documentary evidence and argument that may be presented at or prior to the time of the  
14 hearing of this Motion.

15 Defendants further move that if summary judgment is not rendered in their favor for  
16 all of the relief prayed for herein, that the Court grant Defendants partial summary judgment and  
17 ascertain what material facts are actually in good faith controverted, and thereupon make an order  
18 specifying the facts that appear without substantial controversy and directing such further  
19 proceedings in the action as are just.

20  
21 DATED: January 21, 2000

JOHN S. BATTENFELD  
MELISSA M. MULKEY  
MORGAN, LEWIS & BOCKIUS LLP

23 By   
24 John S. Battenfeld  
25 Attorney for Defendants U. Lim America Inc.  
26 and Tae Jin Yoon  
27  
28

**PROOF OF SERVICE BY MAIL**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 South Grand Avenue, 22nd Floor, Los Angeles, California 90071.

On January 21, 2000, I caused the foregoing document described as **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, AND, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF CLAIMS** to be served by mail upon the person(s) shown below, by placing a true and correct copy (copies) thereof in an envelope (envelopes) addressed as follows:

Richard E. Grey  
LAW OFFICES OF RICHARD E. GREY  
409 Camino Del Rio South, Suite 303  
San Diego, California 92108

sealing said envelope(s), and placing it (them) for collection and mailing on that same date following the ordinary business practices of Morgan, Lewis & Bockius LLP, at its place of business, located at 300 South Grand Avenue, 22nd Floor, Los Angeles, California 90071. I am readily familiar with the business practices of Morgan, Lewis & Bockius LLP for collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to said practices the envelope(s) would be deposited with the United States Postal Service that same day in the ordinary course of business.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 21, 2000 at Los Angeles, California.

SHARON L. SCOTT

Sharon L. Scott  
Signature

— Service on one or more parties is (also) being done by personal service and a Proof of Personal Service will be filed with the court forthwith.